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In the Supreme Court

OF THE

United States

JANUARY TERM, 1941

No. 866

McLAUGHLIN LAND AND LIVESTOCK COMPANY (a corporation),
Petitioner,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal of the State of California, First Appellate District
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal of the State of California, First Appellate District.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully petitions this Honorable Court for a writ of certiorari to review a decision and judgment of the District Court of Appeal of the State of California, First Appellate District.

Said decision and judgment affirmed a judgment of the Superior Court of the State of California, in and

for the County of Monterey, in favor of respondent as plaintiff therein, and against petitioner as defendant therein.

The decision of said District Court of Appeal is reported in 102 Cal. App. Dec. 592, 105 Pac. (2d) 607.

SUMMARY STATEMENT OF MATTER INVOLVED.

The action was one in unlawful detainer, authorized by Section 1161 (a) Code of Civil Procedure of the State of California. The action was the outgrowth of prolonged litigation between the parties.

Petitioner was and is a corporation organized under the laws of the State of California to transact a general livestock farming and agricultural business in all its branches. (94 Fed. (2d) 491.)

On March 17, 1931, it was the owner of 6640 acres of farming land in Monterey County, California, including the acreage here involved. At that time petitioner executed and delivered to respondent its promissory note in the sum of $173,800.00 Simultaneously, and to secure the aforesaid note, petitioner conveyed its entire farming acreage to Corporation of America, as trustee for said respondent.

During the economic depression then existing, petitioner defaulted in the payment of the foregoing indebtedness. As a result a sale of said property under the terms of said deed of trust was noticed by said trustee for March 26, 1932. (92 Fed. (2d) 491.)

Respondent claimed to have become the purchaser of said property at the time of said alleged sale, for

the sum of $80,000.00. The fact of said sale was credibly disputed; likewise its validity. (94 Fed. (2d) 491-492.)

Suit was thereafter commenced by an assignee of respondent for the balance claimed to be due upon said promissory note after the allowance thereon of a credit in said sum of $80,000.00. The assignee recovered judgment against petitioner in said action in the sum of $98,699.98.

The complaint in the action by said assignee was based upon the execution of the aforesaid promissory note and the balance claimed to be unpaid thereon. (R. T. 209-210.) Nothing in said complaint indicated that said note was secured by a deed of trust or that there had been any foreclosure thereof. The answer of petitioner therein admitted the execution of said note. (R. T. 216-217.) As a matter of law, said answer admitted the amount claimed to be due in said complaint.

The findings of the Court were to the effect that all allegations in the complaint were true. (R. T. 219-221.)

Said action presented no issue as to the validity of the alleged trustee's sale or the bank's ownership of said property. The following litigation and proceedings then ensued.

On May 27, 1932, action to dispossess petitioner of its entire farming property was commenced by respondent pursuant to the provisions of said Section 1161 (a) California Code of Civil Procedure. This action is numbered 13,738 on the records of the Superior Court of Monterey County, California.

On July 11, 1933, similar action in said Court was instituted by the respondent to recover the 600 acres involved herein. (Action No. 14,573.) The bank's alleged ownership of the property was an issue in each of said unlawful detainer actions. (R. T. 337.)

In the first unlawful detainer action petitioner herein had judgment.

That judgment was subsequently held to be *res adjudicata* as to the bank's second action to dispossess petitioner. (22 Cal. App. (2d) 411-415-417.)

On March 9, 1936, the petitioner as debtor filed its petition under Section 75 of the Bankruptcy Act in the District Court of the United States, in and for the Northern District of California. The respondent bank was named therein as a creditor and the foregoing property referred to as an asset of petitioner. Respondent immediately filed a petition to dismiss said proceedings under said Section 75 of the Bankruptcy Act. (94 Fed. (2d) 491.) Upon recommendation of the special master to whom the bank's petition to dismiss was referred, the said United States District Court directed the dismissal of the debtor's petition.

The findings of said special master, as well as the order and judgment of said United States District Court, purported to find and determine that petitioner was at the time incapable of transacting its corporate farming business by reason of non-payment of its corporate franchise tax and secondly, that the petitioner was not the owner of the property referred to.

It was petitioner's contention that the jurisdiction of said United States District Court in said proceedings terminated with the Court's foregoing finding as to petitioner's corporate incapacity.

Petitioner appealed from said order and judgment of said United States District Court. The judgment of said Court was subsequently partly affirmed by the United States Circuit Court of Appeals, Ninth Circuit. (94 Fed. (2d) 491.) This affirmance was predicated solely upon the ground that petitioner was not at that particular time a farming corporation because of its failure to pay the state corporate franchise tax.

On January 10, 1939, in the Superior Court of said Monterey County, respondent commenced the unlawful detainer action here involved. The respondent again alleged ownership of said property. Issue was joined upon said allegation. Petitioner also pleaded in bar and as an estoppel the judgment rendered in its favor in the first unlawful detainer action. The case proceeded to trial. Petitioner's plea of estoppel was rejected and evidence offered to sustain same refused. (102 Cal. App. Dec. 592.) Over the objections of petitioner the records of the aforesaid debtor's proceedings under Section 75 of the Bankruptcy Act were admitted in evidence as purporting to conclusively establish the validity of the foreclosure sale and thus the bank's ownership of the property. (102 Cal. App. Dec. 592.) Judgment was rendered in favor of respondent in said action, said judgment being based upon the ground that the matter of the validity of the bank's title to and its ownership of said property

had become *res adjudicata* in the proceedings commenced by petitioner under said Section 75. (102 Cal. App. Dec. 592.)

An appeal from said judgment was taken by petitioner herein to the District Court of Appeal of the State of California, First Appellate District. The latter Court, and upon the same ground of *res adjudicata,* affirmed the judgment of the trial Court. (102 Cal. App. Dec. 592.)

Application to said District Court of Appeal for a rehearing of said matter was subsequently denied without opinion.

On November 9, 1940, the Supreme Court of the State of California, also without opinion, denied petitioner's application for a hearing of said matter by said Supreme Court.

Upon written application to this Honorable Court, the time within which to file this application was extended to February 15, 1941.

QUESTIONS PRESENTED.

When an agricultural corporation is incapacitated to transact its business of farming by reason of nonpayment of its corporate franchise tax and the bankruptcy court in proceedings commenced by said corporation under Section 75 of the Bankruptcy Act so determines, does such Court retain jurisdiction in said proceedings to determine title to real property in the possession of the debtor?

Does not the determination by such bankruptcy court that such corporation is not a farmer because

of non-compliance with the state tax laws deprive it of jurisdiction to make any other valid finding or determination in such proceedings?

Did not the affirmance of the judgment of the United States District Court by the Circuit Court of Appeals of the United States upon the ground that said corporation was not a farmer because of such non-payment of its franchise tax merely affirm and validate the judgment of the United States District Court upon that issue alone?

As to all other issues determined by said United States District Court in said proceedings, was not its judgment void and of no legal effect?

Did not the decision of the District Court of Appeal of the State of California misconstrue said Section 75 of the Bankruptcy Act, as well as the powers and jurisdiction of the bankruptcy court thereunder?

Did not said decision of said District Court of Appeal fail to accord full faith and credit to the opinion of the Circuit Court of Appeals, Ninth Circuit (92 Fed. (2d) 491) as required by Article 4, Section 1, of the Constitution of the United States and by the decisions of this Court?

Did not said decision of said District Court of Appeal arbitrarily and unlawfully deprive this petitioner of available and future rights, privileges and immunities under said Section 75 of the Bankruptcy Act?

Does not said decision of said District Court of Appeal deprive this corporation and its stockholders of property in violation of settled principles of law

and in violation of the Fourteenth Amendment to the Constitution of the United States?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

The reasons relied upon by petitioner herein are concisely stated:

(1) In holding that the debtor's proceedings under Section 75 of the Bankruptcy Act were *res adjudicata* as to the bank's ownership of said property, the decision of said District Court of Appeal of California decided a federal question with reference to the jurisdiction of the bankruptcy court in such proceedings, not heretofore determined by this Court.

(2) In holding that the bankruptcy court had jurisdiction to determine such question of title and ownership of said property in such proceedings, even though said United States District Court was without jurisdiction to entertain said proceedings by virtue of the corporate status of petitioner, the decision of said District Court of Appeal decided a federal question of substance in a way probably not in accord with the decisions of this Court. For the same reasons the decision of said District Court of Appeal misconstrued said Section 75 of the Bankruptcy Act, its objects, purposes, policies and intendments, and the powers of bankruptcy courts thereunder.

(3) The operation, effect, and policy of said Section 75 of the Bankruptcy Act, as well as the rights, privileges and immunities of this petitioner and other

debtors under said section of the Bankruptcy Act, have been drawn into question by said decision of the District Court of Appeal of the State of California.

(4) The decision of said District Court of Appeal gave erroneous and unlawful effect to the decision and judgment of said United States District Court in said proceedings.

(5) The decision of said District Court of Appeal of the State of California misconstrued and misapplied the decision of the Circuit Court of Appeals, Ninth Circuit, in declaring that when the Circuit Court of Appeals affirmed said judgment of the United States District Court, it became *res adjudicata* upon the matter of the bank's ownership of said property.

(6) The decision of said District Court of Appeal did not accord full faith and credit to the decision of said Circuit Court of Appeals of the United States as required by Article 4, Section 1, of the Constitution of the United States and the decisions of this Court.

(7) The decision of said District Court of Appeal disregarded said decision of said Circuit Court of Appeals which expressly declared that it affirmed the judgment of said United States District Court solely because petitioner was not then a farmer by virtue of its failure to pay its corporate franchise tax.

(8) The decision of said District Court of Appeal in holding that the petitioner's proceedings under said Section 75 of the Bankruptcy Act were *res adjudicata* as to the bank's ownership of said property and in rejecting petitioner's valid and substantial plea of estoppel arising from a preceding judgment in peti-

tioner's favor in an unlawful detainer action was arbitrary and capricious, in violation of settled principles of law, contrary to undisputed fact and contrary to previous adjudications by the Courts of said state involving the same subject matter, as well as the identical issues and parties. For such reasons, said opinion was in violation of the Fourteenth Amendment to the Constitution of the United States.

Your petitioner presents herewith as part of this petition a brief more fully setting forth its views upon the substantial questions involved.

A certified transcript of the record on file with said District Court of Appeal of California is also presented.

Wherefore, petitioner prays that a writ of certiorari issue under the seal of this Court directed to the District Court of Appeal of the State of California, First Appellate District, to the end that this case may be reviewed and determined by this Honorable Court as provided for by the statutes of the United States and that the judgment and decision of said District Court of Appeal of the State of California be reversed by this Honorable Court, and for such other relief as may seem meet and proper.

Dated at San Francisco, California, this 12th day of February, 1941.

McLaughlin Land and Livestock Company,

Petitioner,

By George Thomas Davis,

Counsel for Petitioner.